

SCHAPIRO DECLARATION EXHIBITS CONTINUED

Schapiro Exhibit 27

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC TELEVISION,)
INC., PARAMOUNT PICTURES CORPORATION,)
AND BLACK ENTERTAINMENT TELEVISION,)
LLC,)
)
PLAINTIFFS,) CASE NO.
) 07-CV-2103
VS.)
)
YOUTUBE INC., YOUTUBE, LLC AND)
GOOGLE, INC.,)
)
DEFENDANTS.)
-----)
)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET AL.,)
ON BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)
)
PLAINTIFFS,) CASE NO.
) 07-CV-3582
VS.)
)
YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)
)
DEFENDANTS.)

VIDEOTAPED DEPOSITION OF AMY POWELL
TAKEN ON TUESDAY, DECEMBER 15, 2009

JOB NO. 18310

1 APPEARANCES:

2

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22 ALSO PRESENT:

23 PAUL KOENIG, Paramount
24 REBECCA PRENTICE, General Counsel, Paramount
25 SCOTT McNAIR, Videographer

1 09:41:29 MS. KOHLMANN: Objection as to form.

2 09:41:31 You can answer.

3 09:41:31 THE WITNESS: For the film Transformers we

4 09:41:40 uploaded the official approved trailer to YouTube.

5 09:41:44 BY MR. VOLKMER:

6 09:41:48 Q. Did you upload any other materials besides

7 09:41:50 the official trailer to YouTube?

8 09:41:52 A. We always only upload approved materials

9 09:41:56 that have been routed through the marketing

10 09:41:59 executives, talent and filmmakers VIA approved upload

11 09:42:04 account.

12 09:42:08 MR. VOLKMER: Move to restrike the response

13 09:42:10 as nonresponsive.

14 09:42:11 Q. Did you upload any other materials besides

15 09:42:13 the official trailer to YouTube with respect to the

16 09:42:16 Transformers promotional campaign?

17 09:42:19 MS. KOHLMANN: Objection.

18 09:42:20 You can answer.

19 09:42:24 THE WITNESS: For Transformers 2, which is

20 09:42:26 the film I was referencing, we uploaded the official

21 09:42:31 trailer and the official approved clips from the EPK.

22 09:42:37 BY MR. VOLKMER:

23 09:42:37 Q. What about for the original Transformers

24 09:42:40 movie, did Paramount's interactive marketing

25 09:42:43 department engage in any viral marketing of that film

1 09:42:46 using YouTube?

2 09:42:47 A. I don't recall.

3 09:43:00 Q. How long ago did Paramount upload the

4 09:43:03 Transformers 2 trailer to YouTube?

5 09:43:09 A. The Transformers 2 final trailer was earlier

6 09:43:16 this year. I don't recall specifically.

7 09:43:20 Q. So Paramount's interactive marketing

8 09:43:25 department has continued to use YouTube for

9 09:43:28 promotional purposes after this lawsuit was filed; is

10 09:43:31 that correct?

11 09:43:31 MS. KOHLMANN: Objection as to form.

12 09:43:33 You can answer.

13 09:43:34 THE WITNESS: Can you repeat the question,

14 09:43:37 please.

15 09:43:37 BY MR. VOLKMER:

16 09:43:37 Q. Sure. Paramount's interactive marketing

17 09:43:39 department has continued to use YouTube for

18 09:43:41 promotional purposes after this lawsuit was filed; is

19 09:43:44 that correct?

20 09:43:45 A. We use YouTube as we do any other website

21 09:43:48 that we're in business with, which is to upload

22 09:43:51 approved materials for the marketing of our films.

23 09:43:55 Q. Right. And my question was, did Paramount's

24 09:43:59 interactive marketing department continue to use

25 09:43:59 YouTube for promotional purposes after this lawsuit

1 09:44:01 was filed?

2 09:44:02 MS. KOHLMANN: Objection; asked and

3 09:44:02 answered.

4 09:44:12 You can answer.

5 09:44:13 THE WITNESS: As I said, YouTube is one of

6 09:44:15 many websites that we use to market our films with

7 09:44:17 approved materials.

8 09:44:19 BY MR. VOLKMER:

9 09:44:22 Q. That doesn't respond to the question though.

10 09:44:24 The question was, after this lawsuit was filed, did

11 09:44:28 Paramount continue to use YouTube to promote its

12 09:44:31 films?

13 09:44:31 MS. KOHLMANN: Objection; asked and answered

14 09:44:33 and getting argumentative.

15 09:44:35 You can answer.

16 09:44:36 THE WITNESS: We use YouTube to upload

17 09:44:41 approved marketing materials as we do any other

18 09:44:44 website that we're in business with.

19 09:44:46 BY MR. VOLKMER:

20 09:44:46 Q. And that practice of using YouTube to upload

21 09:44:49 approved marketing materials has taken place after

22 09:44:53 the filing of this lawsuit which is in March of 2007?

23 09:44:57 A. That is correct.

24 09:44:58 Q. The materials that Paramount's employees and

25 09:45:19 agents have uploaded to YouTube for promotional

1 09:45:22 purposes, those materials are authorized to be on the
2 09:45:25 YouTube service; is that right?
3 09:45:27 MS. KOHLMANN: Objection as to form.
4 09:45:33 BY MR. VOLKMER:
5 09:45:33 Q. You can answer.
6 09:45:34 A. I can only speak on behalf of my team.
7 09:45:37 Q. Sure. So the materials that were uploaded
8 09:45:41 by your team or by agents of Paramount at the
9 09:45:45 direction of your team, those materials that have
10 09:45:48 been uploaded to YouTube, they are authorized to be
11 09:45:51 on the YouTube service, correct?
12 09:45:52 MS. KOHLMANN: Objection as to form.
13 09:45:55 You can answer.
14 09:45:55 THE WITNESS: To the best of my knowledge,
15 09:45:58 my team has always had the direction of only
16 09:46:02 uploading approved materials.
17 09:46:06 BY MR. VOLKMER:
18 09:46:07 Q. Would you say that everything that your team
19 09:46:09 has uploaded or has approved to be uploaded, that set
20 09:46:14 of materials are authorized?
21 09:46:15 MS. KOHLMANN: Objection; vague.
22 09:46:19 You can answer.
23 09:46:20 THE WITNESS: I'm not sure I know what you
24 09:46:21 mean by "authorized."
25

1 10:19:04 A. Uh-huh.

2 10:19:05 Q. Were there any other instances in which a

3 10:19:08 Paramount marketing employee or agent uploaded clips

4 10:19:12 from that film to YouTube to promote the film?

5 10:19:15 MS. KOHLMANN: Objection.

6 10:19:17 THE WITNESS: To the best of my knowledge,

7 10:19:18 all materials were uploaded VIA the same destination

8 10:19:22 within YouTube.

9 10:19:23 BY MR. VOLKMER:

10 10:19:28 Q. And how about the film *Blades of Glory*, did

11 10:19:31 Paramount use YouTube to promote that film?

12 10:19:33 MS. KOHLMANN: Objection.

13 10:19:34 THE WITNESS: I believe so.

14 10:19:36 BY MR. VOLKMER:

15 10:19:36 Q. And how did Paramount use YouTube to promote

16 10:19:40 that film?

17 10:19:40 A. Uploading approved materials, clips, trailer

18 10:19:45 to YouTube.

19 10:19:45 Q. Was there a promotion or marketing campaign

20 10:19:59 on YouTube that you thought was more successful than

21 10:20:03 the others?

22 10:20:03 MS. KOHLMANN: Objection as to form; vague.

23 10:20:05 You can answer.

24 10:20:06 THE WITNESS: Not necessarily.

25

1 10:20:07 BY MR. VOLKMER:

2 10:20:18 Q. Are you aware of all the account names and

3 10:20:21 user names that Paramount has used to upload

4 10:20:23 materials to YouTube?

5 10:20:26 MS. KOHLMANN: Objection as to form.

6 10:20:30 THE WITNESS: No, I wouldn't say that I am.

7 10:20:32 BY MR. VOLKMER:

8 10:20:36 Q. Is there anyone in your department that

9 10:20:38 would know all of the account names and user names

10 10:20:41 that Paramount has used to upload materials to

11 10:20:44 YouTube?

12 10:20:44 MS. KOHLMANN: Objection as to form.

13 10:20:46 THE WITNESS: No, it's a large company.

14 10:20:48 BY MR. VOLKMER:

15 10:21:07 Q. In the ordinary course of your job, would

16 10:21:09 you or someone working for you keep a list of all the

17 10:21:13 user names that have been used to upload materials to

18 10:21:16 YouTube?

19 10:21:16 MS. KOHLMANN: Objection as to form.

20 10:21:21 THE WITNESS: For my specific department the

21 10:21:26 team member who is leading a campaign would have

22 10:21:31 knowledge of the accounts that he or she is using.

23 10:21:34 BY MR. VOLKMER:

24 10:21:43 Q. So is the answer to that question no?

25 10:21:45 MS. KOHLMANN: Objection.

1 10:21:47 THE WITNESS: Can you repeat the question?

2 10:21:48 BY MR. VOLKMER:

3 10:21:48 Q. Sure. In the ordinary course of your job,

4 10:21:50 would you or someone who worked for you keep a list

5 10:21:53 of all the YouTube user names or account names that

6 10:21:57 have been used to upload materials to the YouTube

7 10:22:00 service?

8 10:22:01 MS. KOHLMANN: Objection as to form.

9 10:22:04 You can answer.

10 10:22:04 THE WITNESS: My team members would keep

11 10:22:07 track of the user names that they specifically would

12 10:22:10 use.

13 10:22:15 BY MR. VOLKMER:

14 10:22:15 Q. And you said that Paramount was a big

15 10:22:16 company earlier. Are there circumstances in which

16 10:22:20 there were uploads of Paramount material to YouTube

17 10:22:23 for promotional reasons that occurred outside of the

18 10:22:28 purview of your department?

19 10:22:30 MS. KOHLMANN: Objection as to form.

20 10:22:32 THE WITNESS: I wouldn't know.

21 10:22:33 BY MR. VOLKMER:

22 10:22:42 Q. You never heard of any other departments at

23 10:22:46 Paramount uploading materials to YouTube for

24 10:22:51 promotional or marketing purposes?

25 10:22:53 MS. KOHLMANN: Objection as to form.

1 10:22:56 THE WITNESS: No.

2 10:22:56 BY MR. VOLKMER:

3 10:23:03 Q. Didn't you have occasion to view materials

4 10:23:05 on YouTube and make determinations about whether they

5 10:23:07 were authorized marketing material or not?

6 10:23:12 MS. KOHLMANN: Objection.

7 10:23:14 You can answer.

8 10:23:14 THE WITNESS: Can you repeat the question?

9 10:23:15 BY MR. VOLKMER:

10 10:23:15 Q. Sure. Didn't you have occasion in the

11 10:23:17 course of your employment to view materials on

12 10:23:20 YouTube and make determinations about whether they

13 10:23:22 were authorized marketing materials or not?

14 10:23:24 MS. KOHLMANN: Same objection.

15 10:23:25 You can answer.

16 10:23:25 THE WITNESS: In specific instances, yes.

17 10:23:28 BY MR. VOLKMER:

18 10:23:29 Q. In the course of performing that task, did

19 10:23:31 you ever come across marketing material that had been

20 10:23:37 uploaded to YouTube by Paramount but did not emanate

21 10:23:40 from your department?

22 10:23:42 A. No, I don't recall so.

23 10:23:50 MS. KOHLMANN: Bart, we've been going about

24 10:23:52 an hour. So if you get to a point you think we can

25 10:23:56 break, can we do that?

1 02:01:17 BY MR. VOLKMER:

2 02:01:25 Q. Didn't your frustrations with BayTSP

3 02:01:28 removing approved Paramount marketing material from

4 02:01:31 YouTube continue for some lengthy period of time?

5 02:01:35 MS. KOHLMANN: Objection as to form; vague.

6 02:01:37 You can answer.

7 02:01:38 THE WITNESS: No, I don't know that I would

8 02:01:41 say that.

9 02:01:42 BY MR. VOLKMER:

10 02:01:43 Q. Didn't that frustration last for months that

11 02:01:46 Bay continued to remove material that your department

12 02:01:51 had either uploaded or approved to be on the YouTube

13 02:01:53 service?

14 02:01:54 MS. KOHLMANN: Objection; asked and

15 02:01:54 answered.

16 02:01:56 You can answer.

17 02:01:56 THE WITNESS: I don't recall the specific

18 02:01:59 amount of time we had the disagreement.

19 02:02:04 BY MR. VOLKMER:

20 02:02:19 Q. As a result of BayTSP mistakenly removing

21 02:02:25 marketing material from the YouTube service you asked

22 02:02:27 that you have an opportunity to review material

23 02:02:33 before it was taken down from YouTube; is that right?

24 02:02:36 MS. KOHLMANN: Objection; lacks foundation;

25 02:02:39 form.

1 02:02:39 You can answer.

2 02:02:40 THE WITNESS: Can you repeat the question?

3 02:02:43 BY MR. VOLKMER:

4 02:02:44 Q. Sure. As a result of BayTSP mistakenly

5 02:02:47 removing marketing material from the YouTube service

6 02:02:51 you asked that you have an opportunity to review

7 02:02:54 material before it was taken down from YouTube; is

8 02:02:57 that right?

9 02:02:58 A. As part of our -- as part of determining how

10 02:03:02 our partnership would work, we did put several

11 02:03:05 practices in place that would help us both be able to

12 02:03:29 intelligently identify approved materials, one of

13 02:03:13 which was for them to call me and ask me, just as we

14 02:03:16 would ask any other party to call and ask me if

15 02:03:19 content was questionable.

16 02:03:42 Q. The reason that you would be called would be

17 02:03:43 to make a determination as to whether the material

18 02:03:45 that was proposed for removal, whether or not that

19 02:03:49 material was approved Paramount marketing?

20 02:03:53 MS. KOHLMANN: Objection as to form.

21 02:03:58 You can answer.

22 02:03:58 THE WITNESS: The process was put in place

23 02:04:00 not only to determine if content should be removed or

24 02:04:03 not, but to identify what our approved marketing

25 02:04:07 materials were so we could all be on the same page in

1 02:04:13 terms of what that material consisted of.

2 02:04:15 BY MR. VOLKMER:

3 02:04:19 Q. Did any other parties besides BayTSP ever

4 02:04:22 call you and ask whether material on online

5 02:04:29 video-sharing services was authorized or

6 02:04:34 unauthorized?

7 02:04:35 A. Yes.

8 02:04:35 Q. Who else called you?

9 02:04:37 A. Either call or e-mail, I should clarify.

10 02:04:40 Q. Sure.

11 02:04:40 A. Many -- all the time webmasters, different

12 02:04:44 websites, end-users, happens frequently.

13 02:04:49 Q. End-users would contact you and ask you

14 02:04:52 whether or not material on the Internet was approved

15 02:04:55 Paramount marketing material?

16 02:04:56 A. Yes.

17 02:04:57 MS. KOHLMANN: Objection; asked and

18 02:04:58 answered.

19 02:04:58 THE WITNESS: Pardon me, yes.

20 02:04:59 BY MR. VOLKMER:

21 02:05:03 Q. And that would take usually an e-mail

22 02:05:06 format; is that right?

23 02:05:07 MS. KOHLMANN: Objection.

24 02:05:08 THE WITNESS: Either e-mail or phone call,

25 02:05:15 depending on how a person could track me down.

1 02:05:33 MR. VOLKMER: Let's mark Exhibit 16.

2 02:05:34 (Powell Exhibit 16, document bearing

3 02:05:34 Bates number VIA 003724421, marked for

4 02:05:46 identification, as of this date.)

5 02:05:46 MS. KOHLMANN: Thank you.

6 02:05:47 BY MR. VOLKMER:

7 02:06:04 Q. Exhibit 16 is a document that was produced

8 02:06:06 by BayTSP in this litigation. It's an e-mail

9 02:06:11 exchange from June 26th and 27th, 2006. Al Perry

10 02:06:21 John Salter, Mark Ishikawa appear in this e-mail

11 02:06:25 thread.

12 02:06:25 Do you know who Mr. Perry is?

13 02:06:27 A. Yes.

14 02:06:29 Q. And what is his role at Paramount?

15 02:06:31 A. He works on Scott Martin's team, which is

16 02:06:36 the Paramount legal team.

17 02:06:39 Q. And who is Mr. Salter?

18 02:06:43 A. I'm not sure.

19 02:06:48 Q. And Mark Ishikawa ran BayTSP; is that right?

20 02:06:51 A. He works at BayTSP. I'm not sure of his

21 02:06:56 position.

22 02:06:56 Q. In Mark Ishikawa's e-mail to Mr. Salter he

23 02:07:08 writes:

24 02:07:08 Need to discuss how we get the

25 02:07:10 marketing people to let us know what

1 02:45:41 In light of all of the additional
2 02:45:43 focus on infringement on YouTube, I'm
3 02:45:45 checking with Scott to see if we are
4 02:45:46 taking down clips.
5 02:45:49 Do you know what the additional focus on
6 02:45:50 infringement that Mr. Perry references is?
7 02:45:54 MS. KOHLMANN: Objection. Are you asking
8 02:45:57 her as she sits here today?
9 02:46:00 MR. VOLKMER: Yeah, I'm asking her if she
10 02:46:02 has any understanding as to what Mr. Perry was
11 02:46:05 talking about.
12 02:46:05 MS. KOHLMANN: Objection; it's not on this
13 02:46:09 document; lacks foundation.
14 02:46:10 You can answer.
15 02:46:11 THE WITNESS: I am not clear on what he's
16 02:46:14 talking about.
17 02:46:33 MR. VOLKMER: Let's mark Exhibit 20,
18 02:46:36 (Powell Exhibit 20, document bearing
19 02:46:36 Bates number VIA 00431656, marked for
20 02:46:40 identification, as of this date.)
21 02:46:40 MS. KOHLMANN: Thanks.
22 02:46:48 BY MR. VOLKMER:
23 02:47:03 Q. Exhibit 20 is an e-mail exchange produced by
24 02:47:05 Viacom in this litigation. The e-mail thread took
25 02:47:11 place on October 15th and 16th, 2006. And the first

1 02:47:18 message in the thread you write to Tamar Teifeld and
2 02:47:23 Mickey Worsnup and you say:
3 02:47:26 Is this one of our approved
4 02:47:27 clips, question mark.
5 02:47:28 There's a YouTube URL and the subject line
6 02:47:32 is Flags of Our Fathers.
7 02:47:34 Do you know why you reached out to
8 02:47:39 Ms. Teifeld and Mr. Worsnup about the authorization
9 02:47:43 status of this clip?
10 02:47:44 A. I don't know specifically. I presume I was
11 02:47:46 in a meeting and asking them if they were in front of
12 02:47:49 a computer.
13 02:47:51 Q. And Ms. Teifeld responds:
14 02:47:55 Yes, these are clips from the
15 02:47:56 EPK.
16 02:47:57 A. Uh-huh.
17 02:47:57 Q. What is the EPK?
18 02:47:59 A. Electronic press kit.
19 02:48:00 Q. And are clips that are included in the EPK
20 02:48:06 that are uploaded to YouTube authorized to be on
21 02:48:09 YouTube?
22 02:48:09 MS. KOHLMANN: Objection.
23 02:48:11 THE WITNESS: On each specific film we put
24 02:48:14 together what's known as an EPK, which is a
25 02:48:18 collection of approved clips and content for any said

1 02:48:21 film. Those are the clips that are approved for
2 02:48:23 distribution online.
3 02:48:28 BY MR. VOLKMER:
4 02:48:31 Q. So if there's an EPK clip that's appearing
5 02:48:34 on YouTube, it's authorized to be on the YouTube
6 02:48:39 service, correct?
7 02:48:39 MS. KOHLMANN: Objection; misstates the
8 02:48:41 record.
9 02:48:42 THE WITNESS: Not necessarily.
10 02:48:43 BY MR. VOLKMER:
11 02:48:44 Q. Why is that?
12 02:48:45 A. Only the final approved locked color
13 02:48:50 corrected sound mixed final version of the EPK clips
14 02:48:53 are approved for distribution across YouTube and
15 02:48:59 other websites.
16 02:49:00 Q. But all the final versions meeting all the
17 02:49:10 criteria you just listed, those EPK clips are
18 02:49:13 authorized to be on the YouTube service, correct?
19 02:49:15 MS. KOHLMANN: Objection as to form.
20 02:49:16 THE WITNESS: Presumably, yes.
21 02:49:21 BY MR. VOLKMER:
22 02:49:28 Q. This is the same YouTube URL that's
23 02:49:32 referenced in the previous exhibit, Exhibit 19. Do
24 02:49:38 you know if you told Mr. Perry whether or not this
25 02:49:43 clip was authorized to be on YouTube?

1 02:49:45 A. I don't recall.

2 02:50:08 Q. The clip that's referenced in the e-mail on

3 02:50:11 Exhibit 20, that's a clip that was authorized to be

4 02:50:14 on YouTube, correct?

5 02:50:15 MS. KOHLMANN: Objection.

6 02:50:18 THE WITNESS: I would have to review the

7 02:50:19 clip to tell you.

8 02:50:20 BY MR. VOLKMER:

9 02:50:24 Q. Ms. Teifeld says, where you wrote to

10 02:50:27 Ms. Teifeld "Is this one of our approved clips?" And

11 02:50:30 she wrote back "Yes, these clips are from the EPK."

12 02:50:33 Based on this e-mail, isn't the most logical

13 02:50:40 inference that the clip being referenced here is one

14 02:50:43 that was approved by Paramount to appear on YouTube?

15 02:50:45 MS. KOHLMANN: Objection as to form.

16 02:50:47 THE WITNESS: Based on Tamar's e-mail she's

17 02:50:51 saying, yes, these clips are from the EPK, and hence

18 02:50:53 we would assume that, yes, they are approved clips.

19 02:50:57 BY MR. VOLKMER:

20 02:50:57 Q. And you had no reason to question

21 02:51:00 Ms. Teifeld's assessment, correct?

22 02:51:02 A. Correct.

23 02:51:13 Q. You did not ask that this clip be removed

24 02:51:16 from the YouTube service, did you?

25 02:51:18 A. I don't recall.

1 02:51:19 Q. Based on this e-mail in which Ms. Teifeld
2 02:51:24 says that they are approved clips that came from the
3 02:51:29 EPK, do you think that you asked anyone that these --
4 02:51:33 that this clip be removed?
5 02:51:34 MS. KOHLMANN: Objection.
6 02:51:39 THE WITNESS: I do not believe I would have
7 02:51:41 requested it to be removed, with the understanding it
8 02:51:43 was an approved clip from the EPK.
9 02:52:22 MR. VOLKMER: Let's mark Exhibit 21.
10 02:52:23 (Powell Exhibit 21 VIA11786487,
11 02:52:23 document bearing Bates number VIA11786487,
12 02:52:40 marked for identification, as of this date.)
13 02:52:40 BY MR. VOLKMER:
14 02:52:56 Q. This is an e-mail exchange from May 8th and
15 02:52:58 9th, 2007 produced by Viacom in this litigation.
16 02:53:04 In the first message in this thread Kristina
17 02:53:08 Tipton asked whether Paramount should leave up a
18 02:53:13 Transformers clip that appeared on the Ellen
19 02:53:17 Degeneres show; is that right?
20 02:53:18 A. Yes.
21 02:53:18 Q. And it says -- the message from Ms. Tipton
22 02:53:23 says:
23 02:53:24 Publicity wouldn't let us post
24 02:53:26 the clip officially online.
25 02:53:28 Why wouldn't publicity allow Paramount to

1 03:56:26 down.

2 03:56:28 Why did you need to speak with the publicity

3 03:56:29 department?

4 03:56:30 A. I don't recall.

5 03:56:31 Q. Who would you have checked with in the

6 03:56:35 publicity to determine -- in the publicity department

7 03:56:37 to make determinations about whether materials should

8 03:56:41 be removed from YouTube?

9 03:56:42 MS. KOHLMANN: Objection; calls for

10 03:56:42 speculation.

11 03:56:43 You can answer.

12 03:56:44 THE WITNESS: I would have asked whoever the

13 03:56:48 publicist handling that movie was.

14 03:56:49 BY MR. VOLKMER:

15 03:56:50 Q. And who was the publicist for the film

16 03:56:55 that's being discussed here, Jackass 2?

17 03:56:58 A. I don't recall.

18 03:56:59 Q. So were the publicists for Paramount films

19 03:57:08 engaged in the upload of materials to promote the

20 03:57:14 films?

21 03:57:16 MS. KOHLMANN: Objection.

22 03:57:17 You can answer.

23 03:57:17 THE WITNESS: No, not to the best of my

24 03:57:19 knowledge.

25

1 03:57:20 BY MR. VOLKMER:

2 03:57:22 Q. So why would you need to check with someone
3 03:57:24 in publicity before confirming which videos should be
4 03:57:28 taken down?

5 03:57:30 A. On certain films with unique circumstances,
6 03:57:33 as with the film Jackass, certain clips were approved
7 03:57:37 for different usages. Some were only approved for
8 03:57:41 online and some were only approved to live in the
9 03:57:45 offline world.

10 03:57:47 Q. Are you saying that you needed to check with
11 03:57:57 publicity to determine whether clips were permitted
12 03:58:04 to be marketed in the online world in the case of
13 03:58:07 Jackass 2?

14 03:58:11 MS. KOHLMANN: Objection to form.

15 03:58:12 You can answer.

16 03:58:13 THE WITNESS: To the best of my knowledge,
17 03:58:16 yes. In the film Jackass 2 we had specific
18 03:58:21 strategies put in place as to where clips would be
19 03:58:25 positioned and distributed.

20 03:58:28 BY MR. VOLKMER:

21 03:58:29 Q. And the publicity department was in charge
22 03:58:30 of that decision?

23 03:58:32 A. I don't know that I would say they were in
24 03:58:35 charge of it. They were -- it was a collaboration
25 03:58:38 with the publicity department to make those

1 03:58:40 determinations.

2 03:58:41 Q. But here Jackass 2 clips had been syndicated

3 03:58:45 by the interactive marketing department, right?

4 03:58:48 MS. KOHLMANN: Objection.

5 03:58:49 THE WITNESS: As the e-mail indicates, some

6 03:58:51 of the clips were. All of the clips that we

7 03:58:55 syndicated had an official warning before the clips.

8 03:59:00 BY MR. VOLKMER:

9 03:59:07 Q. Right. So what was the purpose of checking

10 03:59:09 with the publicity department if you knew that your

11 03:59:12 department had engaged in online viral marketing of

12 03:59:18 Jackass 2?

13 03:59:18 MS. KOHLMANN: Objection; asked and

14 03:59:18 answered.

15 03:59:20 You can answer.

16 03:59:21 THE WITNESS: We did not have a viral

17 03:59:23 marketing campaign for Jackass 2. All we had was the

18 03:59:27 syndication of a very specific set of clips, all of

19 03:59:30 which had a warning in front of them.

20 03:59:34 BY MR. VOLKMER:

21 03:59:34 Q. Why did you need to check with publicity if

22 03:59:36 you had engaged in a syndication marketing strategy

23 03:59:42 online with respect to Jackass 2?

24 03:59:44 A. With --

25 03:59:44 MS. KOHLMANN: Objection; asked and

Schapiro Exhibit 28

To: "Kevin Donahue" <kevin@youtube.com>
From: "Julie Supan" <julie@youtube.com>
Cc:
Bcc:
Received Date: 2006-05-10 23:00:18 GMT
Subject: Fw: wiredset - working together

Sounds like another Deep Focus opp except paid ;)

-----Original Message-----

From: "Grant Johmann" <grant@wiredset.com>
Date: Wed, 10 May 2006 17:19:33
To:<julie@youtube.com>
Subject: wiredset - working together

Hi Julie,

My name is Grant - I work over at Wiredset - an online marketing agency in NYC. We are all huge fans of YouTube and we upload many of our clients videos to the service. Our best performing videos of the moment are a music video from Flyleaf (over 400,000 views) and weekly clips from the new MTV show - Call to Greatness.

My purpose for this email is to introduce myself, say hi, and hopefully get to know you better and work with YouTube at a higher level. We work with every major label and have clients all over the entertainment industry - and we always get video from them specifically for YouTube.

I'd love to chat over the phone about all possibilities of working together. We are a forward thinking company like yours and have limitless potential for marketing ideas.

I'm mostly free on Thursday and Friday - pls let me know what day/time works best for you.

Look forward to hearing from you.

Thanks,

Grant

--
[Grant M. Johmann]
Wiredset LLC
grant@wiredset.com: <mailto:grant@wiredset.com>
212-242-3400

Wiredset
425 W 13th St.
Suite 504
New York, NY 10014

Eighteen
Visions: <<http://myspace.com/eighteenvisions>>

Call to Greatness

As Fast As

Jamie
Foxx: <<http://myspace.com/jamiefoxx>>

Schapiro Exhibit 29

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)
Plaintiffs,)
vs.) NO. 07-CV-2203
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
Defendants.)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
Plaintiffs,)
vs.) NO. 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
Defendants.)

VIDEOTAPED DEPOSITION OF KYLE BONICI
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, APRIL 22, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
JOB NO. 16739

1
2
3
4 VIDEOTAPED DEPOSITION OF KYLE BONICI,
5 held at the offices of WILSON, SONSINI,
6 GOODRICH & ROSATI, One Market Street,
7 Spear Tower, San Francisco, California,
8 pursuant to notice, before ANDREA M. IGNACIO
9 HOWARD, CLR, CCRR, RPR, CSR License No. 9830.

1 APPARENCES:

2

3 FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

4 SHEARMAN & STERLING, LLP

5 By: KIRSTEN CUNHA, Esq.

6 599 Lexington Avenue

7 New York, New York 10022-6069

8 (212) 848-4000 kirsten.cunha@shearman.com

9

10 FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and

11 GOOGLE, INC.:

12 WILSON SONSINI GOODRICH & ROSATI, LLP

13 By: MICHAEL H. RUBIN, Esq.

14 NEMA MILANINIA, Esq.

15 650 Page Mill Road

16 Menlo Park, California 94304

17 (650) 493-9300 mrubin@wsgr.com

18

19 ALSO PRESENT:

20 PARAMOUNT PICTURES

21 By: PAUL KOENIG, Esq.

22 5555 Melrose Avenue

23 Hollywood, California 90038-3197

24 (323) 956-5882 paul_koenig@paramount.com

25

1 A P P E A R A N C E S: (Continued.)

2

3

4 ALSO PRESENT: Ken Reeser, Videographer.

5

6 -----oOo---

7

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KYLE BONICI

1 09:49:41 A I don't know.

2 09:49:42 Q You don't know?

3 09:49:45 A Huh-uh.

4 09:49:46 Q Do you know how you would find that out?

5 09:49:53 A I could, you know, educate myself and go in

6 09:49:55 and try to, but I don't -- I don't know currently.

7 09:49:58 Q Has anyone at Paramount ever expressed

8 09:50:02 concern over negative comments appearing around

9 09:50:06 Paramount content on the YouTube service?

10 09:50:13 A Not that I recall. Possibly, but not that I

11 09:50:18 recall.

12 09:50:18 Q How many videos have you uploaded to the

13 09:50:23 Paraccount?

14 09:50:24 A I don't recall the amount.

15 09:50:25 Q Roughly.

16 09:50:26 A I couldn't give an accurate estimation. I'm

17 09:50:30 sorry. I couldn't give an accurate estimation, I'm

18 09:50:38 sorry. I'd have to see, like, what's been uploaded,

19 09:50:40 and I could tell you if I uploaded those, but...

20 09:50:46 MR. RUBIN: I'd like to mark Exhibit 4.

21 09:50:47 (Document marked Bonici Exhibit 4

22 09:51:04 for identification.)

23 09:51:04 THE WITNESS: Thank you.

24 09:51:05 MR. RUBIN: Q. Mr. Bonici, this Exhibit 4 is

KYLE BONICI

1 09:51:07 a document that someone in my office printed out also
2 09:51:13 on April 28th. This is a listing of all of the videos
3 09:51:17 currently active in the Paraccount in order of most
4 09:51:22 viewed.
5
6 09:51:24 A Uh-huh. Would you like me to go in --
7 09:51:30 Q Do you recognize this?
8 09:51:31 MS. CUNHA: There's no question yet.
9 09:51:32 THE WITNESS: Sorry.
10 09:51:33 MR. RUBIN: Q. Do you see it says there are
11 09:51:35 "96" videos active in the Paraccount?
12 09:51:38 A Yes.
13 09:51:39 Q Have you ever removed a video from the
14 09:51:42 Paraccount?
15 09:51:46 A I can't recall.
16 09:51:46 Q Do you know if anyone else has ever removed a
17 09:51:49 video from the Paraccount?
18 09:51:51 A I don't know.
19 09:51:52 Q Do you know if anyone else other than you
20 09:52:03 have uploaded videos to the Paraccount?
21 09:52:08 A Not that I recall.
22 09:52:09 Q Have you ever given third parties access to
23 09:52:12 the account credentials for the Paraccount?
24 09:52:15 A I don't know.
25 09:52:17 Q You don't know if you've done that?

KYLE BONICI

1
2 09:52:19 A Oh, personally me? No, I don't recall me
3 09:52:22 ever doing it.
4 09:52:22 Q Do you know if anyone else at Paramount has
5 09:52:25 ever done that?
6 09:52:26 A I don't know.
7 09:52:27 Q Do you believe that the uploading of
8 09:52:37 Paramount content to the Paraccount has been an
9 09:52:40 effective marketing tool for Paramount?
10 09:52:40 MS. CUNHA: Objection to form.
11 09:52:41 THE WITNESS: Please repeat the question.
12 09:52:43 MR. RUBIN: Q. Do you believe the uploading
13 09:52:44 of Paramount content to the Paraccount has been an
14 09:52:49 effected -- effective marketing tool for Paramount?
15 09:52:52 MS. CUNHA: Same objection.
16 09:52:53 THE WITNESS: I don't know. I'm -- I don't
17 09:52:56 know. I'm unaware if it's been effective or not.
18 09:53:02 MR. RUBIN: Q. You continue to do it to this
19 09:53:05 day; is that right?
20 09:53:05 A Uh-huh.
21 09:53:06 Q Does Paramount continue to engage in
22 09:53:09 promotional strategies it believes to be ineffective?
23 09:53:13 MS. CUNHA: Objection to form.
24 09:53:14 THE WITNESS: We're not sure it's
25 09:53:15 ineffective, or we're not sure it's effective either.

Schapiro Exhibit 30

4/28/2009

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Tropic Thunder
Trailer - 8.15.08
1 year ago
6,186,562 views



Cloverfield
"Incredible" TV Spot
1 year ago
2,327,741 views



Freedom Writers
Trailer - YouTube...
2 years ago
1,146,601 views



See SHOOTER, Now
In Theaters!
2 years ago
771,420 views



The Heartbreak Kid
Trailer
1 year ago
680,359 views



Hot Rod Now in
Theaters!
1 year ago
677,228 views



The Ruins Trailer
1 year ago
668,111 views



The Heartbreak Kid -
Now Playing!
1 year ago
658,255 views



Hot Rod In Theaters
August 31!
1 year ago
644,908 views



Stardust Trailer 1
1 year ago
605,637 views



The Last Kiss - Now
Playing in T...
2 years ago
411,542 views



New Star Trek Trailer
(2009) - O...
5 months ago
402,624 views



Bee Movie Trailer 5
1 year ago
327,382 views



Bee Movie Trailer 1
1 year ago
228,956 views



Last Kiss: A Day in
the Life of ...
2 years ago
158,639 views



Bee Movie Featurette
1
1 year ago
155,512 views



Last Kiss: A Day in
the Life of ...
2 years ago
154,179 views



Spiderwick
Chronicles
1 year ago
149,667 views



Perfume - Trailer #1
2 years ago
147,887 views



Will's Humps!
2 years ago
134,764 views

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DATE: 4/29/09 EXHIBIT# 4
DEPONENT: Bonaci, K
CASE: Viacom, et al., v. YouTube, et al., The Football
Association Premier League, et al., v. YouTube, et al.,
Case Nos. 07-CV-2203 and 07-CV-3582

A. Ignacio Howard, CSR, RPR, CCRR, CLR, No. 9830

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Norbit: Meet Rasputia

2 years ago
122,069 views



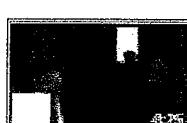
Drillbit Taylor Trailer

1 year ago
115,714 views



Indiana Jones: Kingdom of the Cr...

11 months ago
96,811 views



Charlotte's Web - Gag Reel

2 years ago
74,999 views



Bee Movie Trailer 3

1 year ago
73,553 views



See Disturbia This Weekend! New...

2 years ago
69,500 views



Shine A Light Trailer

1 year ago
54,798 views



Bee Movie Trailer 2

1 year ago
49,519 views



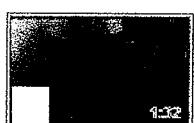
Spiderwick Chronicles Trailer 2

1 year ago
48,420 views



I Love You Man, Trailer (2009) ...

4 months ago
34,527 views



Broken Bridges Trailer

2 years ago
31,981 views



Eddie Murphy Make-Up Sequence

2 years ago
31,354 views



Step 3

Last Kiss: A Day In the Life of ...

2 years ago
30,721 views



Beyonce at the premiere of Dream...

2 years ago
28,934 views



Norbit Clip: 'Don't Adjust My Seat'

2 years ago
27,152 views



Last Kiss: A Day in the Life of ...

2 years ago
24,450 views



Anika Noni Rose at the premiere ...

2 years ago
24,263 views



Norbit Gag Reel

2 years ago
21,991 views



Things We Lost in the Fire Trailer

1 year ago
21,765 views



Jennifer Hudson at the premiere ...

2 years ago
21,069 views

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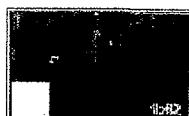
Eddie Murphy at the
premiere of ...

2 years ago
20,263 views



Zodiac Trailer

2 years ago
19,837 views



Dreamgirls Red
Carpet Premiere 1...

2 years ago
18,669 views



Hot Rod Trailer 1

1 year ago
18,420 views



Hot Rod - Trailer 2

1 year ago
15,937 views



Imagine That Trailer
(2009) - Of...

3 months ago
15,871 views



Last Kiss: A Day in
the Life of ...

2 years ago
13,729 views



Monsters vs Aliens
Teaser Traile...

3 months ago
13,561 views



Last Kiss: Day in the
Life with ...

2 years ago
13,519 views



Last Kiss: A Day in
the Life of ...

2 years ago
11,798 views



Last Kiss: A Day in
the Life of ...

2 years ago
11,246 views



Hotel for Dogs -
Teaser Trailer

10 months ago
10,733 views



Iron Man Trailer

1 year ago
10,169 views



Last Kiss: Day in the
Life with ...

2 years ago
9,837 views



Shooter Trailer

2 years ago
9,288 views



Last Kiss: A Day in
the Life of ...

2 years ago
8,397 views



Cloverfield Trailer 2
1-18-08

1 year ago
7,247 views



Jamie Foxx at the
premiere of Dr...

2 years ago
7,100 views



Last Kiss: Day in the
Life with ...

2 years ago
6,770 views



Madagascar: Escape
2 Africa

10 months ago
6,706 views

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 Stop-Loss Trailer 1 year ago 5,248 views	 Monsters vs Aliens - 3/27/09 3 months ago 4,872 views	 Transformers tv spot Discovery30 1 year ago 4,636 views	 Last Kiss: A Day in the Life of ... 2 years ago 4,465 views	 Last Kiss: A Day in the Life of ... 2 years ago 4,235 views
 Shrek the Third Trailer 2 years ago 4,019 views	 The Ruins "Skin" TV Spot 1 year ago 4,018 views	 Eagle Eye - Theatrical Trailer 1 10 months ago 3,122 views	 Danny Glover at the premiere of ... 2 years ago 2,553 views	 Transformers Trailer - Hidden 1 year ago 1,921 views
 Transformers: Revenge of the Fallen 1 month ago 1,664 views	 Dreamgirls director Bill Condon ... 2 years ago 1,445 views	 Dance Flick Trailer - 8/14/09 3 months ago 1,186 views	 Eagle Eye - Teaser Trailer 10 months ago 1,063 views	 Transformers Trailer 2 years ago 1,027 views

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**Monsters vs Aliens:
First Look**
3 months ago
911 views



**Indiana Jones:
KOTCS TVSpot4**
11 months ago
845 views



The Soloist - Trailer
1 month ago
734 views



**G.I. Joe - Big Game TV
Spot**
1 month ago
660 views



**Indiana Jones
TVSpot8 - RETURN**
11 months ago
652 views



**Indiana
Jones TVSpot9**
11 months ago
516 views



**Star Trek - Big Game
TV Spot**
1 month ago
499 views



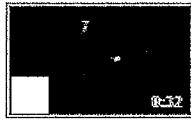
**Transformers:
Revenge of the Fal...**
1 month ago
439 views



**Transformers Trailer
- Destiny**
1 year ago
337 views



**Indiana Jones
TVSpot3 - LEGEND**
11 months ago
303 views



**Indiana Jones
TVSpot6 - RESTING ...**
11 months ago
239 views



**Indiana Jones
TVSpot5 - WAITING**
11 months ago
224 views



**Indiana Jones
TVSpot7 - CONTROL**
11 months ago
197 views
no rating



**Eddie Murphy in
Imagine That: TV...**
2 weeks ago
167 views



**Eddie Murphy in
Imagine That: TV...**
2 weeks ago
160 views

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Schapiro Exhibit 31

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC.,)
COMEDY PARTNERS, COUNTRY MUSIC)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and)
BLACK ENTERTAINMENT)
TELEVISION, LLC,)
)
Plaintiffs,)
)
vs.) CASE NO.
) 07-CV-2203
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET)
AL., ON BEHALF OF THEMSELVES AND)
ALL OTHERS SIMILARLY SITUATED,)
)
Plaintiffs,)
)
vs.) CASE NO.
) 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
)

VIDEOTAPED DEPOSITION OF CUONG LAM

New York, New York

Thursday, August 6, 2009

JOB NO: 17462

1

2 APP E A R A N C E S:

3

FOR THE VIACOM PLAINTIFFS:

4

JENNER & BLOCK, LLP
BY: SCOTT B. WILKENS, ESQ.
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
202-639-6072
swilkens@jenner.com

5

6

7

8

FOR DEFENDANT GOOGLE:

9

WILSON SONSINI GOODRICH & ROSATI, PC
BY: BART E. VOLKMER, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
650-493-9300
bvolkmer@wsgr.com

10

11

12

ALSO PRESENT:

13

14

AYDALINE GARCIA, VIDEOGRAPHER

15

16

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25

1 C. LAM

2 Did you create that account?

3 MR. WILKENS: Objection to the form of
4 the question.

5 13:22:52 You can answer.

8 Q. Which agency?

9 A. Deep Focus.

10 13:23:27 Q. I'd like to mark Exhibit 1.

11 (Lam Exhibit 1, E-mail, dated October
12 16, 2006, with attachment, Bates Numbered
13 VIA 10390550 to VIA 10390552 marked for
14 identification.)

15 13:23:56 (Document review.)

16 Q. And Exhibit 1 is an e-mail message
17 that was sent from Cuong Lam to Tina Exarhos,
18 Lisa Preston and Joe Armenia on Monday, October
19 16, 2006.

20 13:24:28 Do you recognize this document,

21 Mr. Lam?

22 A. Yeah.

23 Q. And this is an e-mail message that you
24 sent to Ms. Exarhos, correct?

25 13:24:40 A. It looks that way, yes.

1 C. LAM

2 Q. And the message says:

3 "Attached is the MTV2 digital assets

4 distribution chart starting with Andy/Wonder

5 13:24:55 Showzen"?

6 A. That's correct.

7 Q. And Wonder Showzen is also a program

8 that appeared on MTV2, is that right?

9 A. Yes, that is correct.

10 13:25:06 Q. If you could turn to the attachment,

11 which is on the next page.

12 The attachment is entitled, "MTV2

13 Program Promotion Digital Assets Distribution

14 2006 (10-13-06)."

15 13:25:19 Did you create this chart?

16 A. Yes.

17 Q. And do you believe that the data

18 contained in this chart is accurate?

19 A. It's pretty accurate, yes.

20 13:25:35 Q. And this chart shows that a number of

21 clips were uploaded to YouTube for various MTV2

22 programs, including Andy Milonakis Show, Wonder

23 Showzen and Celebrity Death Match, Where My Dogs

24 At?, Chico & Guapo, Final Fu, and All That Rocks.

25 13:26:03 Did MTV2 upload materials to YouTube

1 C. LAM

2 to promote those programs?

3 MR. WILKENS: Objection to the form.

4 A. Yes.

5 13:26:19 Q. And the clips from those programs were
6 uploaded to YouTube with MTV2's authorization,
7 correct?

8 MR. WILKENS: Objection to the form.

9 A. They were uploaded to the MTV2 account
10 13:26:30 on YouTube as they were across the Internet.

11 Q. And by uploading the materials to the
12 MTV2 account, MTV2 was authorizing those
13 materials to appear on the YouTube service, is
14 that right?

15 13:26:52 MR. WILKENS: Objection to the form.

16 A. Yes.

17 Q. And the purpose of uploading clips
18 from those shows to YouTube was to promote the
19 underlying programming, right?

20 13:27:05 MR. WILKENS: Objection to the form.

21 A. The purpose of uploading clips onto
22 YouTube, as well as various sites listed on this
23 document, was to use these sites outside of MTV
24 universe as platforms to promote our shows.

25 13:27:24 Q. Who is Jeff Castaneda.

1 C. LAM

2 A. Jeff Castaneda, I believe, is a
3 director in PR, public relations communications.

4 I don't know what the official title
5 13:27:36 is.

6 Q. And Mr. Castaneda uploaded clips from
7 Wonder Showzen and the Andy Milonakis Show to
8 various Internet Web sites to promote those
9 programs, right?

10 13:27:52 MR. WILKENS: Objection to the form.

11 A. I'm not sure if he uploaded it himself
12 or what. I'm not sure.

13 Q. Did you ever communicate with
14 Mr. Castaneda by instant message?

15 13:28:02 A. I don't think so. I'm pretty -- no.

16 Q. Earlier you said that you weren't sure
17 if Mr. Castaneda uploaded certain materials
18 himself.

19 Which materials were you referring to?

20 13:28:22 MR. WILKENS: Objection.

21 Mischaracterizes the testimony.

22 A. I'm not -- I'm not sure. I am not
23 sure as to what Jeff did or did not do. I'm not
24 aware of his work.

25 13:28:44 Q. Do you recall Mr. Castaneda being

Schapiro Exhibit 32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
)
vs.) Case No.
) 07CV3582
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
Defendants.)
)

VIDEOTAPE DEPOSITION OF STEPHEN FARRELL
NEW YORK, NEW YORK
TUESDAY, JULY 14, 2009

JOB NO. 17249

DAVID FELDMAN WORLDWIDE, INC.
450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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8 VIDEOTAPED DEPOSITION OF STEPHEN

9 FARRELL, held at the offices of Mayer Brown,
10 LLP, 1675 Broadway, New York, New York,
11 pursuant to notice, before Rebecca
12 Schaumloffel, Registered Professional
13 Reporter and Notary Public of the State of
14 New York.

15

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100

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212)705-8585

1

2

3 A P P E A R A N C E S

4

5

6 FOR THE PLAINTIFFS VIACOM
7 INTERNATIONAL, INC.:

8 SHEARMAN & STERLING LLP
9 By: KIRSTEN CUNHA, ESQ.
10 599 Lexington Avenue
11 New York, New York 10022
12 (212) 848-4744
13 kirstencunha@shearman.com

14

15

16

17

FOR THE DEFENDANTS:

18 MAYER BROWN, LLP
19 BY: A. JOHN MANCINI, ESQ.
20 ARIC S. JACOVER, ESQ.
21 1675 Broadway
22 New York, New York 10019
23 Jmancini@mayerbrown.com
24 Asjacover@mayerbrown.com

25

26

ALSO PRESENT:

27

28

29

30

31

32

33

34

35 Carlos King, Videographer
36 Emily Nash

37 DAVID FELDMAN WORLDWIDE, INC.
38 450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 FARRELL

2 A. In my current position, I
3 sometimes suggest that, though the
4 actual determination is not made by me,
13:50:37 5 it is usually made by the media
6 department.

7 Q. I understand. In your
8 current company, do you have written
9 materials that you provide to clients
13:50:49 10 about the marketing potential for these
11 types of activities?

12 A. Specifically for stealth
13 placement of these kinds of things, I
14 am not aware of written materials on
13:51:17 15 that.

16 Q. Okay. And by the way, is
17 Viacom a current client of your company
18 in your current position?

19 A. No.

13:51:28 20 Q. So you're not doing any work
21 for Viacom today?

22 A. No.

23 Q. How about any Viacom
24 entities?

13:51:35 25 A. Not that I am aware of, no.

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1 FARRELL

2 Q. And Spike is not a current
3 client of yours?

4 A. Nope.

13:51:42 5 Q. Were you involved in the
6 effort to create an official channel
7 for Spike on YouTube?

8 A. Yes.

9 Q. And when did you first
10 become involved in that effort?

11 A. I don't recall specific
12 dates.

13 Q. Whose idea was it to create
14 a Spike channel on YouTube?

13:52:41 15 A. I don't recall specifically,
16 but I know I was involved.

17 Q. It is fair to say, at some
18 point, Spike channel was launched on
19 YouTube, correct?

13:52:57 20 A. Yes.

21 Q. During your tenure?

22 A. Yes.

23 Q. Do you recall how long that
24 Spike channel actually existed on the
13:53:04 25 YouTube website, approximately?

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1 FARRELL

2 A. Approximately, over
3 six months, under a year.

4 Q. What type of content was
13:53:19 5 posted to that Spike channel on
6 YouTube?

7 A. Short, approved clips of
8 Spike -- a variety of Spike
9 programming.

10 Q. Who made the decision of
11 which clips to feature on that channel?

12 A. Combination of folks from my
13 group and digital and programming and
14 legal.

15 Q. Was one of the reasons you
16 wanted a Spike channel on YouTube, to
17 drive traffic to your television and
18 website presence for Spike?

19 A. To promote both properties,
13:54:02 20 yes.

21 Q. Did you need any sign-off on
22 that decision to launch this channel?

23 A. I don't recall.

24 Q. Was it your ultimate
13:54:16 25 decision?

1

FARRELL

2

3 A. I don't recall whether I
4 needed sign-off or it was my ultimate
decision.

13:54:21

5

6 Q. Do you recall how much
7 content was ultimately posted to the
Spike channel on YouTube?

8

A. Not specifically, no.

9

13:54:46

10

11 Q. Do you recall ever
monitoring the traffic to that channel,
to that Spike channel on YouTube?

12

A. Yes.

13

14 Q. What is your recollection of
the traffic to that channel on YouTube?

13:54:59

15

16 A. I recall we got a few
17 thousand subscribers and then traffic
18 was split up by, you know, whatever
19 clips were up there. It wasn't like a
whole number, you know, as far as what

13:55:24

20

21 we got from that channel. It was
22 usually broken up by clips and, you
know, how many people we had coming.

23

24 Q. Some clips were more popular
than others?

13:55:33

25

A. Yes.

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Schapiro Exhibit 33

Marketing Meeting Minutes
September 19, 2007

New Projects (Taylor, Kahner):

- Honda Battle of the Bands (9/24 – 10/29)
- Event happens in GA every January. Never been a DVD in the past but there has been such a high demand in the past. This DVD has footage from January 2006 event.
- Client's goal to sell 30,000 DVDs.
- Working in conjunction with Flowers Communications (w/ Ron Childs).
- Campaign components: Online publicity, Promotions, and Grassroots

Coming Up (Kahner):

- Ignited/Bleach (10/1 – 10/31)
 - Video game. Also on Adult Swim. Anime.
 - Video game release date: October 9th
 - 4 weeks of grassroots. Also a Dedicated Email slated to be sent on October 9th (game release day)
- NBC/Talent Scout (TBD) - more info to come later

Partner Update (Christy, My-lan, Michelle):

Funny Or Die <http://www.funnyordie.com/> (**Christy**)

- Traffic: 775k (NetRatings), 1.8 million (Quantcast), 500k (Compete)
- Video upload site. Will Ferrell is co-owner. Infamous for Landlord Pearl video.
- Celebrities and comedies upload their videos to site. Now site wants more access to musicians and this is where we come in.
- Will write skits, film, edit, and produce everything. We just need to bring the artist to them
- Coming Up: MTV, Fall Out Boy
 - will be the first one from us. Premise = fake press release where they will only ask questions about Ashlee Simpson. Will also have MTV tie-in. Rap Superstars interview FOB asking them what it's like growing up in the 'hood.
- Early pitch to Bon Jovi. Premise = Jon Bon Jovi walks around reciting lyrics to his songs.
- They will allow us to do any promotion as long as there is a celebrity tie-in. Ex. Will not do Jig-A-Loo promo sans celebrity factor
- Please come to Christy if you have artists/clients in mind for this partnership

XXL Magazine <http://www.xxlmag.com/> (**Ben**)

- Traffic: 102k (NetRatings), 326k (Quantcast), 190k (Compete)
- New contest partner . Will be working our Vegoose promotion. Rotating contest on their front page. Contest went live this morning
- Hip-hop audience. Male leaning demographic.
- Better than Source or Vibe magazines
- They have a new marketing director who is great.

Snorg Tee's <http://www.snorgtees.com/> (**Michelle**)

- Traffic: 200k (NetRatings), 240k (Quantcast), 175k (Compete)
- T-shirt company. Somewhat similar to Threadless. Their shirts are the ones with weird slogans/phrases from movies, television, and popular culture.
- Early discussions . They have never done promotions or anything new before so they are a bit nervous. They haven't really known what to do with site since it has blown up.
- Company started by 4 guys right out of college 4 years ago. Site is very basic. Lots of potential for us to do promo.
- They have a newsletter (no stats on this yet) but it is pretty bland. Lots of room for us to work with this newsletter, too.
- Demographic = college student

- Pitched The Honorary Title. More pitches to come. Please speak to Michelle if you have any ideas

Publicity Update (My-lan):

MTV Leak: Celebrity Rap Superstar

- Perez Hilton threw a temper tantrum and MTV wanted the world to know about it
- "Leaked" video clip uploaded to iFILM and YouTube
 - covert operation. No one can know that Fanscape or MTV is involved in this.
 - My-lan emailed gossip blogs with fake email address (gossipgirl40).
 - Not many sites picked it up except the smaller blogs (who pick up anything thrown their way)
 - TMZ picked up video but put it up on their media player, not our YouTube link. Same with iFILM.
 - By Saturday midnight there were 1,000 views on YouTube (that My-lan put up)
 - Gawker put up leak #2 yesterday at 1pm and today there have been 7,000 views
 - We should Digg the video. Also, should use Tube Mogul from start to be able to track views everywhere
 - Is this against WOMMA? Room feels WOMMA doesn't apply because this is the PR/gossip blog world and stunts/leaks/tips happen all the time.
 - Huge success with leaks for MTV. MTV will most likely do this more often. Our publicity team can only benefit from learning experience. See what works and what doesn't.

Media Update (Lisa)

Fanscape Survey: Mobile

- Results from a brief survey. Asked people whether or not they would be interested in receiving an EMAIL newsletter vs. newsletter on their CELL PHONES (about the latest mobile tech and promotions)
 - Almost 50% prefer email to mobile
 - Almost 75% said they were NOT interested in newsletters on their cells
- What's it all mean?
 - we should insert mobile info into newsletters.
 - people are still afraid of giving out their mobile number due to unexpected charges and the like. Odd because mobile technology is getting better. Stigma still lingers.
 - maybe reassure people that they will not get charged crazy fees. Also give them free prize for participating?

Fanscape stats

- Traffic analysis data report
- August 1 = 1 million in our database
- Fanscape newsletter open rate = 8.4%
- Dedicated email open rate = 23%
- Industry average for newsletter open rates = 8%
- Fanscape.com views for August = 160,820
- Contests page views = 19,990
- Blog page views = 5,000 (up from 815 views in May). Should update blog regularly with compelling content to continue to drive traffic
- Fanfeeds = 1.37 million views. Not sure which fanfeed is getting most views.
- Please ask Lisa Jenkins for more info regarding stats.
- JP and Lisa are working on benchmark grid for more conclusive data to compare to. More authority to our numbers.

Schapiro Exhibit 34

Subject: RE: disturbia / paris
From: "Powell, Amy - Paramount" - [REDACTED]

To: Wahtera, Megan - Paramount; Simard, Stephanie - Paramount;
Chiang, Cat - Paramount; Teifeld, Tamar - Paramount
Cc: Date: Mon, 11 Jun 2007 15:24:59 +0000

should definitely not be associated with the studio- should appear as if a fan created and posted it.

From: Wahtera, Megan - Paramount
Sent: Mon 6/11/2007 7:34 AM
To: Powell, Amy - Paramount; Simard, Stephanie - Paramount; Chiang, Cat - Paramount; Teifeld, Tamar - Paramount
Subject: RE: disturbia / paris

hi amy -

we will definitely get this posted.
we assume you want kt/lt to go out to webmasters, plus for us to upload to viral video sites.

for viral video sites - can you confirm you want us to post from random accnts that are not paramount related?

thanks!
megan

-----Original Message-----

From: Powell, Amy - Paramount
Sent: Sun 6/10/2007 4:56 PM
To: Simard, Stephanie - Paramount; Wahtera, Megan - Paramount; Chiang, Cat - Paramount; Teifeld, Tamar - Paramount
Subject: disturbia / paris

see below... can you guys get this posted? it's funny.

From: Sauter, Jeremy - Paramount
Sent: Fri 6/8/2007 7:00 PM
To: Powell, Amy - Paramount; Rich, Gerry - Paramount; Waldman, David - Paramount; Vollman, Michael - Paramount
Subject: Fw: Posted

Amy -
Want to post this?
J-

Jeremy Sauter
Paramount Pictures

----- Original Message -----

From: Mark Lipsky [REDACTED]
To: Sauter, Jeremy - Paramount
Sent: Fri Jun 08 18:56:45 2007
Subject: Posted

Jeremy,
We have posted Disturbia "Paris" :30 V.1 to our website. I have listed

log in information below.

Once you log in you will come to a page with a Disturbia Icon on it and it will bring you to another page with a file tree on the left hand side. Click the top file that will say Disturbia. This will bring you to another page with a thumbnail in the center of the page. To download the spot option click the download icon below the thumbnail. If you want to watch the spot on the website click the thumbnail then click the click here to play icon and wait for them to load. Give me a call with any questions.

Mark

link:

<http://secure.wiredrive.com/clients/buddhajonestrailers/wd/folder/55341/list>



Schapiro Exhibit 35

Subject: RE: FW / YT
From: "Powell, Amy - Paramount" [REDACTED]

To: Tipton, Kristina - Paramount; Wahtera, Megan - Paramount;
Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Cc: Date: Fri, 17 Nov 2006 17:52:12 +0000

Sorry, but I don't understand...?

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures
[REDACTED]

From: Tipton, Kristina - Paramount
Sent: Friday, November 17, 2006 9:46 AM
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Subject: RE: FW / YT

Hi Amy,

To add it, it was temporarily added to our BeHeard favorites, but immediately taken off. There is no way to tell who submitted the video, or that the video was at one time listed under our favorites.

Let me know if you have any questions.

Kristina Tipton
Paramount Pictures
Interactive Coordinator, Promotions & Publicity
323-956-8453

From: Powell, Amy - Paramount
Sent: Friday, November 17, 2006 9:22 AM
To: Tipton, Kristina - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Subject: RE: FW / YT

Grt. Lets just be super careful with how we're linking it, etc. I would have someone out of house be the conduit.

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures
[REDACTED]

From: Tipton, Kristina - Paramount
Sent: Friday, November 17, 2006 9:21 AM
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Subject: RE: FW / YT

Yes, we have the LAPD video on our group, and I'll leave a post in the comments for the LAPD video linking back to our group.

Let me know if you have any questions.

Kristina Tipton

Paramount Pictures

Interactive Coordinator, Promotions & Publicity

323-956-8453

From: Powell, Amy - Paramount
Sent: Friday, November 17, 2006 7:55 AM
To: Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Tipton, Kristina - Paramount; Bordo, Sara - Paramount
Subject: FW / YT
Importance: High

i'm assuming we have the LAPD videos linking to ours and on our profile.. yes? if not, lets urgently get them loaded onto our profile- they could not be more relevant or viral right now. pls confirm.